ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Commission's	)	MM Docket No. 91-221
Regulations Governing	)	
Television Broadcasting	)	

To: The Commission

REPLY COMMENTS OF
SULLIVAN BROADCASTING COMPANY, INC.

Sullivan Broadcasting Company, Inc. ("Sullivan"), by its attorneys, hereby submits its reply to the comments filed in response to the Commission's *Second Further Notice of Proposed Rule Making* (released November 7, 1996) ("*Second Further Notice*") in the above-captioned proceeding:

1. Sullivan responds to the points made by several commentors that DTV technology will eliminate the disadvantages of UHF television station operation and, therefore, any UHF-based exception to the current duopoly rule is unnecessary. This is not true -- DTV will not remedy the disadvantages a UHF station faces, and the current Commission DTV plan, if adopted, will only continue these disadvantages.

2. The current Commission DTV allotment plan would limit the coverage area of UHF stations to an area much smaller than the coverage area enjoyed by VHF stations in the same market. This discrimination stems from the concept now embraced by the Commission of replicating under the DTV plan television stations' current coverage areas. Therefore, the "replication" plan ensures a continuation of smaller audiences for UHF stations. In certain markets, the coverage areas of the replication

proposals may create an even greater disparity than now exists between VHF and UHF stations in the same market.

3. The disadvantages will not be cured with the DTV plan and assertions that DTV will level the playing field for VHF and UHF stations are unfounded. Relaxation of the duopoly rule in favor of VHF/UHF and UHF/UHF station combinations would provide UHF stations with a counterbalancing benefit. Sullivan urges the Commission to find the current handicap of UHF stations and the likely continued disadvantages of UHF stations under the Commission's proposed DTV plan as one of the many persuasive reasons presented in the comments in this proceeding for modification of the duopoly rule to permit VHF/UHF and UHF/UHF station combinations as an unconditional exception to the Commission's duopoly rule.

4. In response to comments that VHF/UHF and UHF/UHF station combinations should be allowed on a case-by-case basis only, Sullivan echoes the comments of the Local Station Ownership Coalition ("LSOG") that UHF disadvantages are "indigenous to the UHF transmission and affect all UHF stations similarly," making case-by-case waivers unwarranted. The comments filed in this proceeding provide a wealth of data on the historical and technical causes of the UHF handicap and its widespread negative impact on the signal coverage, ratings and revenues of UHF stations. One commentor pointed out the majority of the television stations in a particular market are UHF stations with major network affiliations, and argues, therefore, that case-by-case waivers for VHF/UHF and UHF/UHF station combinations are necessary.[1] However, this is an isolated example UHF station parity (yes, there are a few "all U" TV markets),

[1] Comments of Kentuckiana Broadcasting, Inc. at 5.

but does not counterbalance the majority of the comments filed on this issue which offer direct, first-hand accounts of the experiences of licensees operating UHF stations at a disadvantage with VHF stations in their markets.

5. Several commentors have argued unpersuasively that the Commission should sunset existing LMAs and have proposed various methods for early termination of these LMAs and various time frames for termination. However, none has effectively addressed how any proposal for termination of existing LMAs squares with Congress's clear directive that nothing in the Telecommunications Act of 1996 shall prohibit the origination, continuation, or renewal of any television LMAs that were otherwise in compliance with the FCC's regulations on the date of enactment of the Telecommunications Act of 1996.

6. Media Access Project argues that television LMAs are illegal and, therefore, that the Commission is not required to ensure the continuation of such agreements. [2] There is nothing illegal about television LMAs. The Commission itself has acknowledged the existence, use and legality of LMA arrangements when it proposed to attribute television LMAs in a related rulemaking proceeding. *Further Notice of Proposed Rulemaking* in MM Docket Nos. 94-150, 92-51 and 87-154, FCC 96-436 (released November 7, 1996) at para. 27. Previously, the Commission stated that television LMAs do not violate the local multiple ownership rules. *Letter From Roy Stewart to Siete Grande Television, Inc., Licensee of Station WSTE(TV),* DA 96-2037 (released December 9, 1996) (citing *Letter from Barbara A. Kreisman to Paramount Stations Group of Kerrville, Inc.* (June 6, 1995)). Furthermore, the Commission's current

[2] Comments of Media Access Project, et al. at 28-30.

policy respecting television LMAs is reflected in *Public Notice, Processing of Applications Proposing Local Marketing Agreements*, No. 54161, released June 1, 1995. This notice provides that the FCC will not restrict television LMAs so long as the licensee of the brokered station remains in control of the station at all times.

7. The Commission deals in the public interest and has authority to regulate new and speedily-developing fields. Congress placed the regulation of the communications industries into hands of the Commission, which has developed specialized expertise with regard to these industries. The Commission's policies with regard to LMAs were lawfully adopted and fully consistent with the authority of the Commission to establish certain standards to be followed by the agency in the exercise of its licensing powers. *See United States v. Storer Broadcasting*, 351 U.S. 192, 201 (1956). Furthermore, the final outcome of this proceeding will be the ultimate determinate of the lawfulness of LMAs and the rules surrounding their future existence and use.

8. Certain parties allege that LMAs reduce viewpoint diversity and the number of independent voices in a market.[3] The Commission has only to look behind these allegations to find the real complaint of the parties making them. Some commentors alleging that LMAs harm diversity acknowledge that a brokered station is offering additional programming to the market but protest that they themselves would like to offer the programming offered by the brokered station.[4] This argument somehow is transformed into an allegation that diversity is lost in the market in question because of the LMA, although the station owner itself would have provided the same programming.

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[3] E.g., Comments of Kentuckiana Broadcasting, Inc. at 2; Comments of Centennial Communications at 4.

[4] See Comments of Centennial Communications, Inc. at 5.

9. Sullivan was one of many parties that filed comments that support Congress's finding that LMAs have made positive contributions to the television marketplace. The licensees of failing and failed stations, stations re-broadcasting programming of other stations and stations owned by minority and women broadcasters have, through LMAs, improved the programming on their stations, the stability of their stations and their ability to serve their communities as public trustees. The comments that offer positive accounts of the impact of LMAs outweigh those that attack LMAs.

10. In conclusion, Sullivan submits that the record in this proceeding supports Commission rules that: (1) allow common-ownership of UHF/UHF and VHF/UHF station combinations in the same market as unconditional exceptions to the duopoly rule; (2) allow the continuation of grandfathered LMAs for their full and complete terms consistent with Congressional intent; and (3) ensure the right of licensees to enter into LMAs in the future. Sullivan urges the Commission to adopt such rules.

Respectfully submitted,

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